



4. On information and belief, Defendant Hangzhou Strong Magnet & Assembly Co., Ltd. is a Chinese company having its principal place of business at Xingtang Development Zone, No. 2, Xiaoshan, Hangzhou, China.

5. On information and belief, Defendant Playmags Toys Ltd. (“Playmags”) is a UK company having its principal place of business at 13 Hadley Court, Cazenove Road, London N16 6JU. On information and belief, Playmags also has an office at 234 Lee Avenue, Brooklyn, New York 11206.

### **JURISDICTION**

6. This Court has subject matter jurisdiction over Valtech’s federal claims pursuant to 28 U.S.C. §§ 1331 and 1338(a), and 15 U.S.C. § 1121.

7. Venue in this Court is based upon 28 U.S.C. § 1391.

### **FACTUAL BACKGROUND**

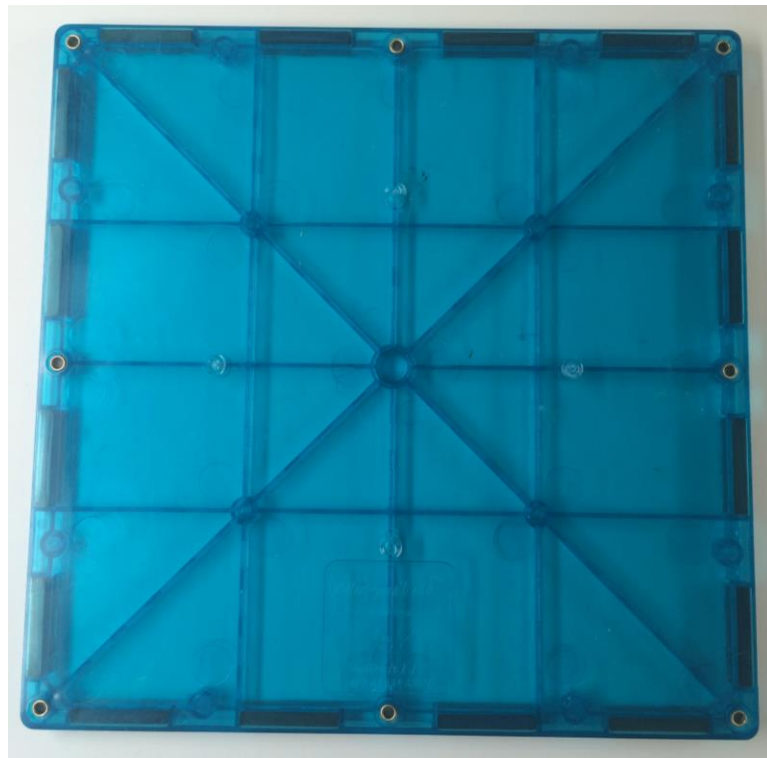
8. In 1997, Valtech introduced a line of opaque, plastic building blocks in various shapes and colors with magnetic strips along their edges under the brand Magna-Tiles®. Valtech sells these products under the name “Magna-Tiles® Solid Colors.” These products are sold in sets containing varying numbers of blocks in assorted shapes and colors, and in sets containing multiple pieces of a single type of block.

9. In 2002, Valtech expanded its Magna-Tiles® brand to include *transparent*, plastic building blocks in various sizes and colors with magnetic strips along their edges, which are sold under the name “Magna-Tiles® Clear Colors.” These products are also sold in sets containing varying numbers of blocks in assorted shapes and colors and in sets containing multiple pieces of a single type of block.

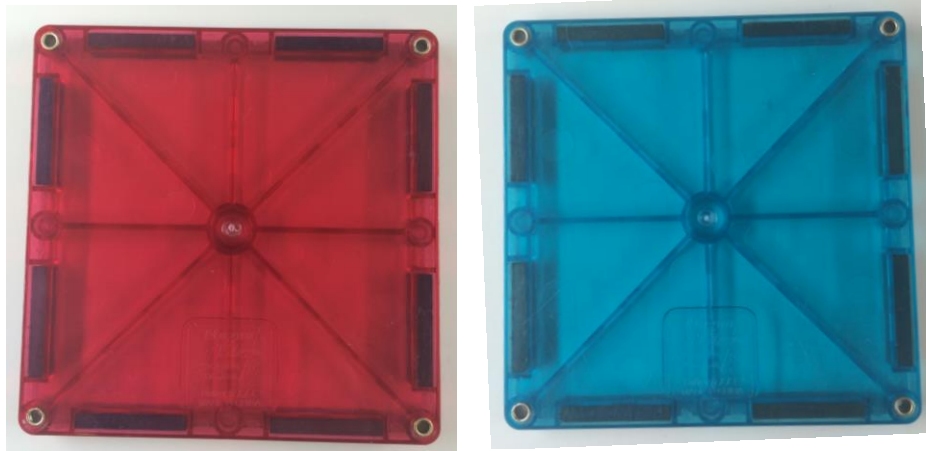
10. Rudolph Valenta, the owner of Valtech, owns a federal registration for the mark MAGNA-TILES for use in association with manipulative toys, namely, blocks and puzzles. (U.S. Reg. No. 2,654,320.)

11. Valtech sells its Magna-Tiles® Clear Colors in at least the following shapes and sizes (note: these blocks are sold in additional colors beyond those depicted below; dimensions are approximate; and the blocks are not shown to scale):

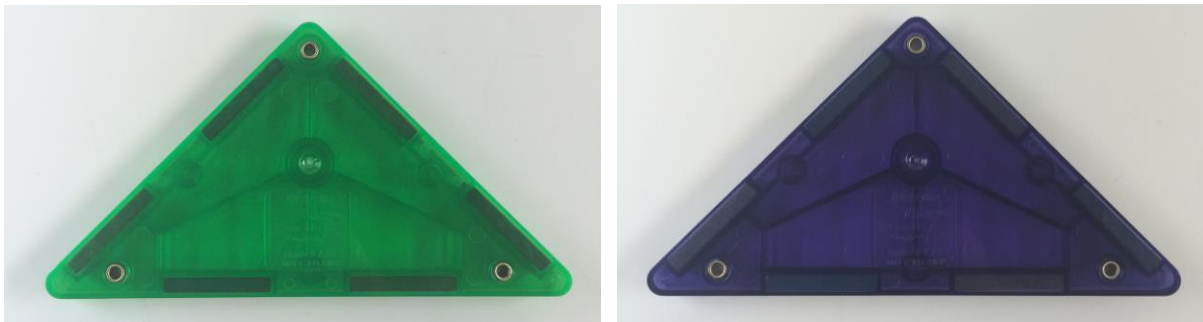
**Magna-Tiles® 6" x 6" Square (shown in blue)**



**Magna-Tiles® 3" x 3" Square (shown in red and blue)**



**Magna-Tiles® 2 3/4" x 2 3/4" x 3 3/4" Right Triangle (shown in green and purple)**



**Magna-Tiles® 2 3/4" x 2 3/4" x 2 3/4" Equilateral Triangle (shown in orange)**



**Magna-Tiles® 5 ½" x 5 ½" x 2 ¾" Isosceles Triangle (shown in red)**



12. As seen above, each Magna-Tiles® Clear Colors block features a unique and stylish interior lattice design that is visible through the transparent surface of the block. This distinctive lattice design is used in all of the Magna-Tiles® blocks—although the exact structure of the lattice work differs depending on the shape of a given block—which gives the Magna-Tiles® Clear Colors line a unique, integrated appearance.

13. The distinctive lattice work and transparent nature of the Magna-Tiles® Clear Colors blocks are non-functional design elements that serve as indicators of origin for these products.

14. Valtech has invested a significant amount of time and money publicizing its Magna-Tiles® Clear Colors products over these many years, and has built up a substantial amount of goodwill in the product-design trade dress of its Magna-Tiles® Clear Colors.

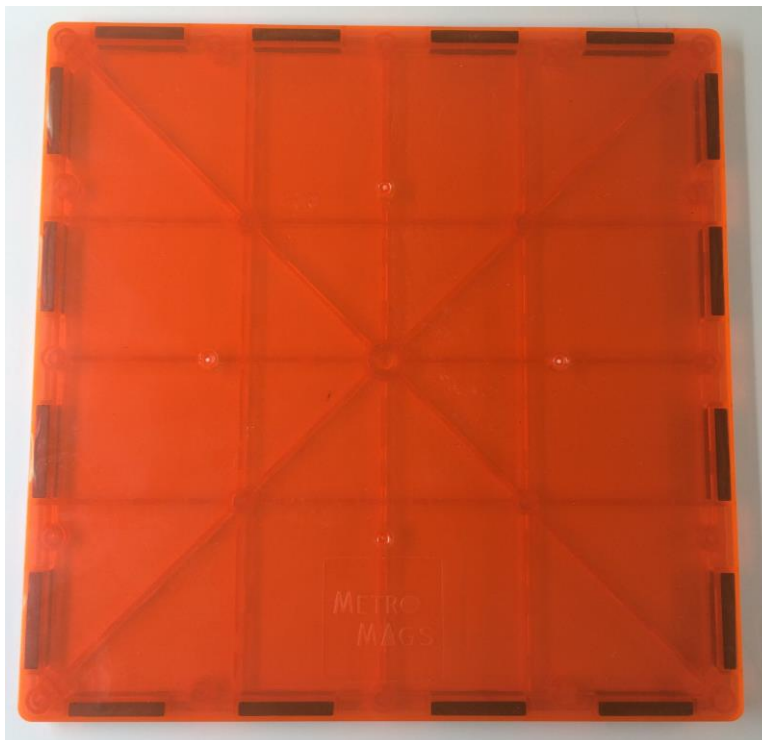
15. As a result, consumers have come to identify Valtech as the source of the Magna-Tiles® Clear Colors products based on the unique appearance of the blocks. In particular, the

public has come to identify Valtech as the source of magnetic blocks having the distinctive shapes, sizes, colors, transparency, and lattice designs that characterize the Magna-Tiles®.

16. On information and belief, Defendants have recently begun selling transparent, plastic building blocks in various sizes and colors with magnetic strips along their edges under the brand names “Metro Mags,” “Magnastix,” and “Playmags” (collectively, “Defendants’ Products”).

17. On information and belief, Defendants sell Metro Mags blocks in at least the following shapes and sizes (note: these blocks may be sold in additional colors beyond those depicted below; dimensions are approximate; and the blocks are not shown to scale):

**Metro Mags 6” x 6” Square (shown in orange)**



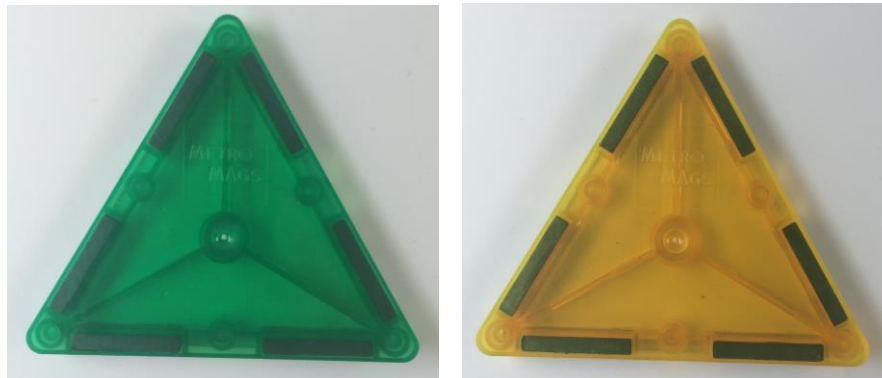
**Metro Mags 3" x 3" Square (shown in orange and green)**



**Metro Mags 2 3/4" x 2 3/4" x 3 3/4" Right Triangle (shown in purple and red)**



**Metro Mags 2 3/4" x 2 3/4" x 2 3/4" Equilateral Triangle (shown in green and yellow)**

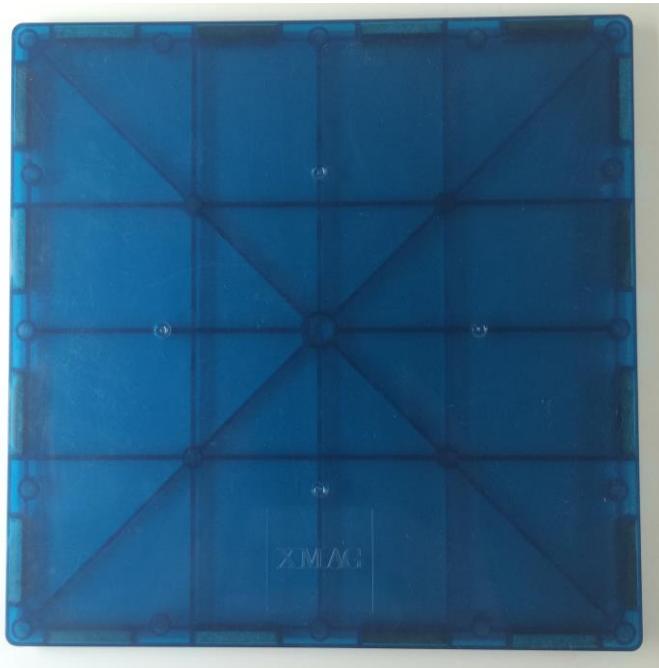


**Metro Mags 5 ½" x 5 ½" x 2 ¾" Isosceles Triangle (shown in blue)**



18. On information and belief, Defendants sell the Magnastix blocks in at least the following shapes and sizes (note: these blocks may be sold in additional colors beyond those depicted below; dimensions are approximate; and the blocks are not shown to scale):

**Magnastix 6" x 6" Square (shown in blue)**





**Magnastix 3" x 3" Square (shown in orange)**



**Magnastix 2 3/4" x 2 3/4" x 3 3/4" Right Triangle (shown in red and orange)**

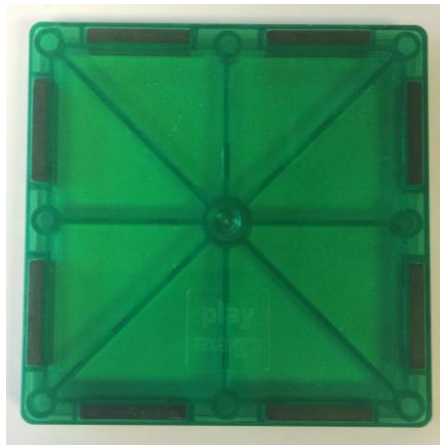


**Magnastix 5 1/2" x 5 1/2" x 2 3/4" Isosceles Triangle (shown in green and blue)**

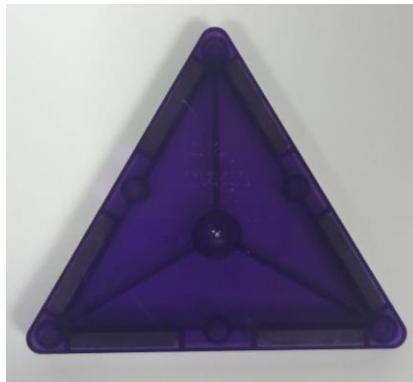


19. On information and belief, Defendants sell the Playmags blocks in at least the following shapes and sizes (note: these blocks may be sold in additional colors beyond those depicted below; dimensions are approximate; and the blocks are not shown to scale):

**Playmags 3" x 3" Square (shown in green)**



**Playmags 2 3/4" x 2 3/4" x 2 3/4" Equilateral Triangle (shown in purple)**



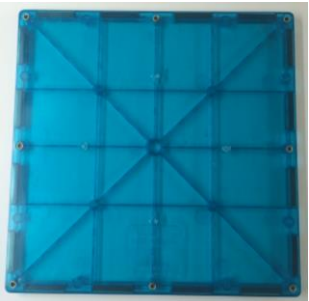
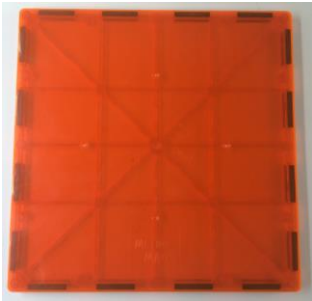
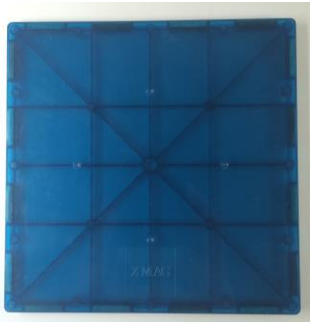
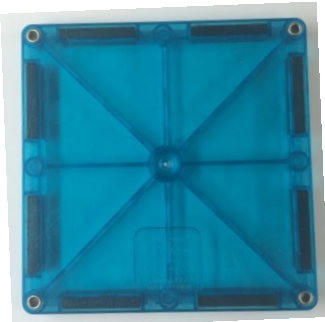







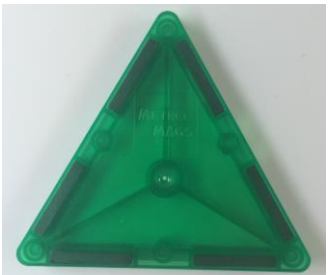

**Playmags 5 ½" x 5 ½" x 2 ¾" Isosceles Triangle (shown in yellow)**







20. On information and belief, Defendants' Products are sold in sets containing varying numbers of blocks in assorted shapes and colors.

21. As shown above, Defendants are selling transparent, magnetic blocks of the same size and shape as Valtech's Magna-Tiles® Clear Color blocks. Moreover, Defendants' Products contain an internal lattice design that is confusingly similar, and nearly identical, to the internal lattice design contained within Valtech's Magna-Tiles® Clear Colors blocks.

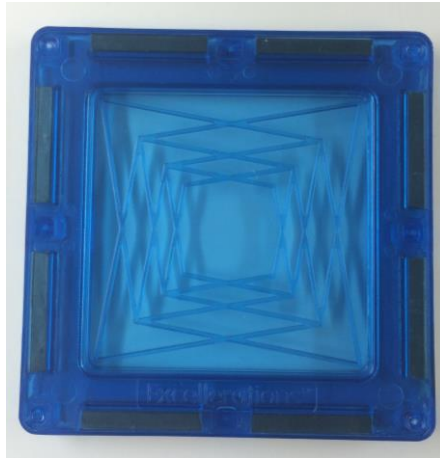
22. To the ordinary observer, Defendants' Products look like and are likely to be mistaken for Valtech's Magna-Tiles® Clear Colors blocks. When viewed side-by-side (ignoring differences in color), Defendants' Products are virtually indistinguishable from Valtech's Magna-Tiles® Clear Colors blocks, as shown below:

Magna-Tiles® (Plaintiff)	Metro Mags (Defendants)	Magnastix (Defendants)	Playmags (Defendants)
			
			
			
			

<b>Magna-Tiles® (Plaintiff)</b>	<b>Metro Mags (Defendants)</b>	<b>Magnastix (Defendants)</b>	<b>Playmags (Defendants)</b>
			

23. Other companies sell magnetic building blocks that do not contain the same internal lattice designs as Valtech's Magna-Tiles® Clear Colors blocks. For example, on information and belief, the Excellerations™ Building Brilliance® Magnetic Shapes blocks, manufactured by Excelligence Learning Corporation of Monterey, California, are sold in at least the shapes and sizes depicted below. These blocks feature unique central designs that do not closely replicate the internal lattice work present in the Magna-Tiles® Clear Colors blocks (note: these blocks may be sold in additional colors beyond those depicted below; dimensions are approximate; and the blocks are not shown to scale):

**Excellerations<sup>TM</sup> 2 1/2" x 2 1/2" Square (shown in blue)**



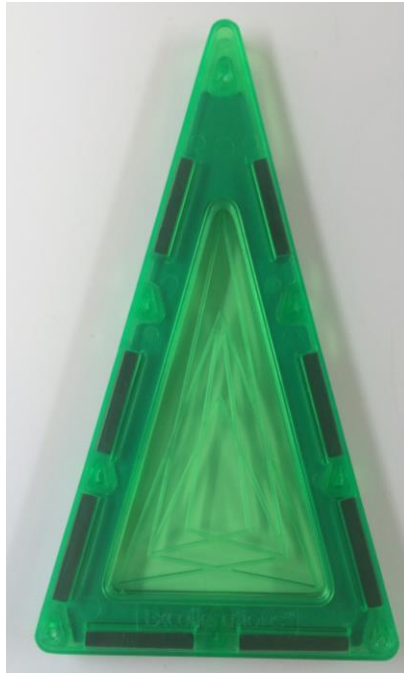
**Excellerations<sup>TM</sup> 2 1/2" x 2 1/2" x 2 1/2" Equilateral Triangle (shown in yellow)**



**Excellerations<sup>TM</sup> 2 1/2" x 2 1/2" x 3 1/2" Right Triangle (shown in red)**



**Excellerations™ 4 ¾" x 4 ¾" x 2 ½" Isosceles Triangle (shown in green)**

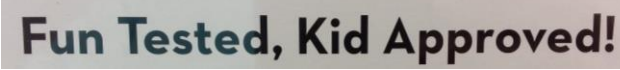


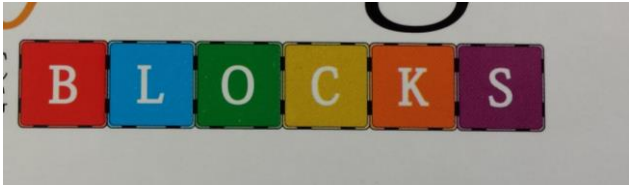
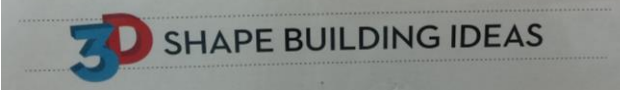



**Excellerations™ 5 ¼" x 2 ½" Double Square (shown in yellow)**





24. In several respects, the packaging used by Defendant Playmags for its magnetic block products (“Playmags’ Packaging”) is identical, or at least confusingly similar, to the packaging used by Valtech for its Magna-Tiles® Clear Colors blocks (“Magna-Tiles® Packaging”), as shown below:

Magna-Tiles® Packaging (Plaintiff)	Playmags’ Packaging (Defendant)
	
<ul style="list-style-type: none"> <li>• Magna-Tiles® Easily Connect for Hours of Open Ended Play</li> <li>• Create Cubes, Pyramids and Other Geometric Shapes</li> <li>• Be Creative with Imaginative, Hands-On Play to Build 3-D Structures</li> <li>• Develop Math, Science, Spatial and Tactile Skills</li> </ul>	<p>Playmags pieces easily connect for hours of open-ended play. Create cubes, pyramids and other geometric shapes. Explore creativity, math and spatial relations. Develops spatial, tactile, patterning and basic geometry skills. Kids love using their imagination to create magnetic structures.</p>
	
	

25. Defendants’ Products are sold in the same marketing channels as Valtech’s Magna-Tiles® blocks, including in toy stores, in general retail stores, and on the Internet.



26. On information and belief, Defendants designed Defendants' Products with knowledge of Valtech's Magna-Tiles® Clear Colors and with the intent to copy Valtech's trade dress to obtain consumer recognition and interest based upon the success and reputation of Valtech's Magna-Tiles® Clear Colors.

27. On information and belief, Playmags designed its packaging with knowledge of Valtech's Packaging with the intent to copy such trade dress and pass off its products as those of Valtech, and to create consumer confusion.

28. The advertising and sale of Defendants' Products are likely to cause confusion, mistake, and/or deception to customers and potential customers that Defendants' Products originate from the maker of the Magna-Tiles® Clear Colors, or that Defendants' Products are affiliated with, sold with the permission of, or approved, sponsored, or licensed by the maker of the Magna-Tiles® Clear Colors products.

29. In selling their Products, Defendants trade on the goodwill Valtech has established in the Magna-Tiles® Clear Colors trade dress and place the valuable reputation of the Magna-Tiles® Clear Colors line of products in the hands of third parties over whom Valtech has no control.

**COUNT I:**  
**PRODUCT-DESIGN TRADE-DRESS INFRINGEMENT**  
**IN VIOLATION OF 15 U.S.C. § 1125(a)**  
**AGAINST ALL DEFENDANTS**

30. Valtech hereby re-alleges and incorporates by reference the allegations of Paragraphs 1–29 of this Complaint as if set forth fully herein.

31. Valtech is the owner of trade dress rights in the Magna-Tiles® Clear Colors product design. This trade dress is non-functional.

32. Valtech's trade dress in the Magna-Tiles® Clear Colors product design has acquired secondary meaning among relevant consumers throughout the United States.

33. Valtech's trade dress in the Magna-Tiles® Clear Colors products has been and continues to be known throughout the United States as identifying and distinguishing Valtech's magnetic block products.

34. Defendants' conduct described above constitutes infringement of Valtech's rights in the Magna-Tiles® Clear Colors product-design trade dress and unfair competition in violation of the Lanham Act, 15 U.S.C. § 1125(a).

35. Valtech is informed and believes that Defendants' infringement of the Magna-Tiles® Clear Colors product-design trade dress has been willful.

36. Valtech has been and will continue to be irreparably harmed and damaged by Defendants' conduct, and Valtech lacks an adequate remedy at law to compensate for this harm and damages.

**COUNT II:**  
**PACKAGING TRADE-DRESS INFRINGEMENT**  
**IN VIOLATION OF 15 U.S.C. § 1125(a)**  
**AGAINST DEFENDANT PLAYMAGS TOYS LTD.**

37. Valtech hereby re-alleges and incorporates by reference the allegations of Paragraphs 1–36 of this Complaint as if set forth fully herein.

38. Valtech is the owner of trade-dress rights in the Magna-Tiles® Packaging. This trade dress is non-functional.

39. The Magna-Tiles® Packaging is inherently distinctive as it comprises arbitrary design elements, including the choice of fonts, colors, and wording. Alternatively, the Magna-Tiles® Packaging has acquired secondary meaning among relevant consumers throughout the United States.

40. Valtech's trade dress in the Magna-Tiles® Packaging has been and continues to be known throughout the United States as identifying and distinguishing Valtech's magnetic block products.

41. The conduct of Playmags described above constitutes infringement of Valtech's rights in the Magna-Tiles® Packaging trade dress and unfair competition in violation of the Lanham Act, 15 U.S.C. § 1125(a).

42. Valtech is informed and believes that Playmags' infringement of the Magna-Tiles® Packaging trade dress has been willful.

43. Valtech has been and will continue to be irreparably harmed and damaged by Playmags' conduct, and Valtech lacks an adequate remedy at law to compensate for this harm and damages.

#### **PRAYER FOR RELIEF**

WHEREFORE, Valtech prays for the following relief:

44. A finding that Defendants have engaged in unfair competition.
45. A finding that Defendants have infringed Valtech's trade-dress.
46. An injunction permanently enjoining Defendants and their directors, officers, agents, servants, employees, and all other persons in active concert or privity or in participation with them, from:
  - a. directly or indirectly infringing or misappropriating Valtech's trade-dress;
  - b. continuing to advertise, promote, sell, or offer to sell any products or services that infringe or misappropriate Valtech's trade-dress;
  - c. continuing to advertise, promote, sell or offer to sell any products or packaging that are likely to cause consumer confusion or misunderstanding as to the source,

sponsorship, approval, or certification of Defendants' goods and/or as to the affiliation, connection, or association with or certification by Valtech;

- d. assisting, inducing, or aiding or abetting any other person or entity in engaging in any of the activities prohibited in subparagraphs a through c above.

47. An order requiring the impounding and destruction of all inventory and advertisements in the possession of Defendants that infringe Valtech's trade-dress and all means of making the same.

48. An order requiring Defendants to file with the Court and serve on Valtech within 30 days after service of the Court's order as herein prayed a report (or other form of proof) in writing under oath setting forth in detail the manner and form in which Defendants have complied with the Court's injunction.

49. A judgment entered for Valtech and against Defendants, jointly and severally, for all damages sustained by Valtech for Defendants' acts of trade-dress infringement, misappropriation, and unfair competition, including but not limited to Defendants' profits and costs, and attorneys' fees.

50. An accounting from Defendants for all gains, profits, and advantages derived from their acts of unfair competition, trade-dress infringement and/or other violations of the law as alleged herein.

51. An order requiring that all gains, profits, and advantages derived by Defendants from their acts of unfair competition, trade-dress infringement and/or other violations of the law as alleged herein, be deemed to be in constructive trust for the benefit of Valtech.

52. An order for such other, further, and different relief as the Court deems proper under the circumstances, including punitive damages if appropriate pursuant to the evidence of record.

**JURY DEMAND**

Valtech hereby demands a trial by jury on all matters and issues so triable.

Dated: January 9, 2014

Respectfully submitted,

By: /Patrick J. Arnold Jr./  
Patrick J. Arnold Jr.  
Caroline A. Teichner  
McAndrews, Held & Malloy, Ltd.  
500 West Madison Street, 34th Floor  
Chicago, Illinois 60661  
T: (312) 775-8000  
F: (312) 775-8100  
parnold@mcandrews-ip.com  
cteichner@mcandrews-ip.com

Attorneys for Plaintiff,  
Valtech, LLC